IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA
CWPs No.156, 157, 158, 514, 515 and 519 of 2001.
Date of decision:28.12.2006.

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1. **CWP No.156 of 2001.**
   Siddhartha Super Spinning Mills Ltd. ..Petitioner
   Versus
   State of H.P. & Others. …Respondents

2. **CWP No.157 of 2001.**
   Siddhartha Super Spinning Mills Ltd. ..Petiitoner
   Versus
   State of H.P. & Others. …Respondents

3. **CWP No.158 of 2001.**
   Siddhartha Super Spinning Mills Ltd. ..Petiitoner
   Versus
   State of H.P. & Others. …Respondents

4. **CWP No.514 of 2001.**
   Ramzan Mohammad ….Petitioner
   Versus
   Siddhartha Super Spinning Mills Ltd.& Ors. …Respondents

5. **CWP No.515 of 2001.**
   Shyam Bahadur ….Petitioner
   Versus
   Siddhartha Super Spinning Mills Ltd. & Ors. …Respondents

6. **CWP No.519 of 2001.**
   Balak Ram ….Petitioner
   Versus
   Siddhartha Super Spinning Mills Ltd.& Ors. …Respondents

Coram

The Hon'ble Mr.Justice J.

Whether approved for reporting ?[1]

CWPs No.156, 157 and 158 of 2001.

For the Petitioner(s): Mr.Ramakant Sharma, Advocate.
For Respondent No.1: Mr.Rajan Dewan, Addl.A.G.
For Respondent No.3: Mr.Shrawan Dogra, Advocate.

CWPs No.514, 515 and 519 of 2001.

For the Petitioner(s): Mr. Shrawan Dogra, Advocate.
For Respondent No.1: Mr. Ramakant Sharma, Advocate.
For Respondent No.2: Mr. Rajan Dewan, Addl.A.G.

Dev Darshan Sud,J.

All these six writ petitions have been filed against the award of the learned Labour Court in case

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

No.24 of 1994. Three writ petitions have been preferred by the Management and three writ petitions being CWPs No.514, 515 and 519 of 2001 by the workmen. Since a common question of law is involved, all the three petitions are disposed of by a common judgment. By the three awards which were passed by the learned Labour Court, the petitioners have been reinstated in service and it has been further ordered that they would be entitled to back wages to the extent of 33% of their salary. The common issue on which decision was taken by the learned Labour Court was; whether the enquiry, in question, was conducted in a fair and proper manner? If so, its effect? The judgment passed by the learned Labour Court, is based on two decisions of the Hon'ble Supreme Court; namely; ***Union of India and others*** vs. ***Mohd.Ramzan, 1991 Lab.I.C.308*** *and* ***Managing Director, ECIL,Hyderabad etc.etc.*** vs. ***B.Karunakar, 1994 Lab.I.C. 762.*** The undisputed fact is that after inquiry was concluded, the inquiry report was not supplied to the workmen depriving them of their valuable rights of showing cause against the punishment. After considering the two judgments, the learned Labour Court, set aside the inquiry and granted the relief in each of the cases.

In the three writ petitions filed by the workmen, the basic grievance is that the back wages, which have been awarded, are not in accordance with law and that their entitlement is to full back wages.

I have heard learned counsel for the parties. In the constitution Bench decision of ***Managing Director, ECIL, Hyderabad and others*** vs. ***B.Karunakar and others, (1993) 4 SCC 727,*** the Hon'ble Supreme Court has held that it is not merely sufficient to hold and decide that the inquiry report was not supplied to the workmen and then conclude that the prejudice has been caused to the workmen. The Hon'ble Court has been pleased to hold as under:-

> "**29.** Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him. The right is a part of the employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice".

However, while disposing of the case, the Hon'ble Court was further pleased to hold that the question of prejudice to the workmen must also be considered and decided and it would not be merely sufficient to hold that the non-supply of the inquiry

report itself constituted prejudice. In paras 31 and 32 of the judgment their Lordships have held as under:-

> "**31.** Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds

that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry

is held. That will also be the correct position in law."

"**32.** In this connection we may refer to a decision of this Court in *State Bank of India vs. N.Sundara Money,(1976) 1 SCC 822*, where the Court has shown the proper course to be adopted where the termination of service of an employee is faulted on a technical ground. This was a case where an employee was appointed as cashier, off and on, by the State Bank of India between July 31, 1973 and August 29, 1973. Together with the earlier employment, this nine days' employment during the said period had ripened into 240 days of broken bits of service. The employment, however, was terminated without notice or payment of retrenchment compensation. The Court moulded the relief taking into consideration the long period which had passed and directed that the employee would be put back to the same position where he left off, but his new salary will be what he would draw were he to be appointed in the same post "today" *denovo*. He was further directed to be ranked below all permanent employees in that cadre and to be deemed to be a temporary hand till that time. He was not allowed to claim any advantages in the matter of seniority. As for the emoluments, he was left to pursue other remedies, if any".

Similarly in the ***State Bank of Patiala and Others*** *vs.* ***S.K. Sharma, (1996)3 SCC 364*** the same principles have been reiterated. Their Lordships, while dealing with the matter, have held in paragraph-28 as under:-

> **"28.**The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in *Russell v. Duke of Norfolk (1949) 1 All E.R. 109* way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. *(See Mohinder Singh Gill v. Chief Election Commr.), (1978) 1 SCC 405.* The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. *(See A.K. Roy v. Union of India, (1982) 1 SCC 271* and *Swadeshi Cotto Mills v. Union of India, (1981) 1 SCC 664).* As pointed out by this Court in *A.K. Kraipak v. Union of India,(1969)2 SCC 262,* the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable – a fact also emphasized by House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service*, (1984)3 All ER 935, where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair

hearing – applying the test of prejudice, as it may be called – that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding – which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., *Liberty Oil Mills v. Union of India, (1984)3 SCC 465.* There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311 (2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no

notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate – take a case where the person is dismissed from service without hearing him altogether (as in *Ridge vs. Baldwin, 1964 AC 40).* It would be a case falling under the first category and the order of dismissal would be invalid – or void, if one chooses to use that expression *(Calvin v. Cart, 1980 AC 574).* But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL v. B.Karunakar, (1993) 4 SCC 727)* or without affording him a due opportunity of cross-examining a witness *(K.L. Tripath v State Bank of India,(1984)1 SCC 43)* it would be a case falling in the latter category – violation of a facet of the said rule of natural justice – in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e. whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct – in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporation such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in *B.Karunakar* should govern all cases where the complaint is not

> that there was no hearing (no notice, no opportunity ad no hearing) but one of not affording a proper hearing (i.e. adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid".

In ***Oriental Insurance Co.Ltd. vs. S.Balakrishnan, AIR 2001 SC 2400,*** the same principles have been reiterated by the Hon'ble Supreme Court. This principle of law has been consistently followed and applied.

Learned counsel for the respondents has contended that this ratio of the judgment is not applicable to the facts of the case before this Court. I am unable to persuade myself to hold that the mere non-supply of the inquiry report *perse* entitles the workmen to reinstatement. From a reading of the judgment of the learned Labour Court, I find that there is no discussion on this aspect of the matter. Rather the precedence cited has been applied without considering them in totality. It was not merely sufficient for the learned Court to hold that the non-supply of the inquiry report itself constituted a valuation of the principle of natural justice entitling the petitioner(s) to reinstatement with benefit of back wages etc. What the Court was further required to do was to have ascertained the prejudice caused to the petitioners. In case the finding was that no prejudice

was caused, the consequences as held in ***Karunakar's case*** would ensue.

The writ petitions are, therefore, allowed. The matters are remanded to the learned Labour Court with a specific direction that it shall record a finding as to whether any prejudice was caused to the workmen by non-supply of the inquiry report in each case and for this purpose, opportunity would be granted to both the parties. The remand is subject to this limited issue.

The three writ petitions filed by the workmen would not survive in view of what has been held above. Be it stated that on the other issues before the learned Labour Court, no challenge had been made by the workmen. That part of the award would attain finality. The matters are, therefore, remanded in terms of the direction above and all these writ petitions are disposed of. It is further directed that since the matters pertains to the year 2001, the learned Labour Court would endeavour to dispose of the cases expeditiously and in any event not returned then six months from the date when this order is received by them. There shall be no order as to costs. The parties shall maintain status quo as existing today.

December 28, 2006 **(Dev Darshan Sud)**
(aks) **Judge.**